

MAINE STATE LEGISLATURE

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CHAPTER 719

PARTITION OF REAL ESTATE

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§ 6501. Civil action

Persons seized or having a right of entry into real estate in fee simple or for life, as tenants in common or joint tenants, may be compelled to divide the same by a civil action for partition.

R.S.1954, c. 176, § 1; 1959, c. 317, § 358.

§ 6502. Form

Persons entitled as provided in section 6501, and those in possession or having a right of entry for a term of years, as tenants in common, may commence an action for partition in the Superior Court held in the county where such estate is by a complaint, clearly describing it and stating whether it is a fee simple, for life or for years, and the proportion claimed by them, the

names of the other tenants in common and their places of residence, if known, and whether any or all of them are unknown.

R.S.1954, c. 176, § 2; 1959, c. 317, § 359.

§ 6503. Service of process; publication

Service of process shall be made as in other civil actions and notice by publication to tenants whose identity or whereabouts are unknown shall be given as in other actions where publication is required.

R.S.1954, c. 176, § 4; 1959, c. 317, § 361.

§ 6504. Persons not notified; pleadings

A person interested and not named in the complaint, or out of the State, and not so notified as to enable him to appear earlier, may, in the discretion of the court, be permitted to appear and defend at any time before final judgment on such terms as may be imposed. Any defendant may, jointly with others or separately, allege in his answer any matter tending to show that partition ought not to be made as prayed for.

R.S.1954, c. 176, § 5; 1959, c. 317, § 362.

§ 6505. Guardians and agents

When an infant or mentally ill person, living in the State, has no guardian and appears to be interested, the court shall appoint a guardian ad litem for him and shall appoint an agent for persons interested who had been out of the State for one year before the action was commenced and do not return before judgment for the partition is to be made and have no actual notice of the actions.

R.S.1954, c. 176, § 7; 1959, c. 242, § 8; c. 317, § 364.

§ 6506. Tenants in common of sawmills

Tenants in common of a sawmill may have a division of the time during which each may occupy according to his interest, as partition is made of an estate. The court may make all necessary decrees in relation thereto.

R.S.1954, c. 176, § 8.

§ 6507. Defendant claiming part; separate trial

When it appears from the pleadings that one or more defendants claim to be seized of the whole of a specific parcel of

the premises of which partition is prayed, there may first be a separate trial of that question only, at the discretion of the presiding justice. When it appears on trial that any defendant has no interest in the estate, he shall be heard no further and the plaintiff shall recover of him the costs of the trial.

R.S.1954, c. 176, § 9; 1959, c. 317, § 365.

§ 6508. Costs

When a plaintiff is found to own a less share than is claimed in his complaint, he shall have partition of such share, but the defendant recovers costs. When found entitled to have partition of the share claimed, he recovers costs of the defendant. In such cases or on default, a judgment that partition be made shall be entered. In all other cases, including default of the defendant or defendants, when judgment for partition is given, the court, after notice to all parties in interest, may, in the discretion of the presiding justice, apportion the costs between the plaintiff and defendant or defendants or allow the plaintiff to recover costs of the proceedings against the defendant or defendants to be taxed the same as in a civil action, and execution may be issued therefor.

R.S.1954, c. 176, § 10; 1959, c. 317, § 366.

§ 6509. Joinder or severance; death or conveyance

The owners may join or sever in their complaints. When they join and one dies or conveys his share, or when a several plaintiff dies or conveys his share, the complaint, by leave of court, may be amended by erasing his name and inserting the names of his heirs, devisees or grantees, and they may proceed with the action for their respective shares.

R.S.1954, c. 176, § 11; 1959, c. 317, § 367.

§ 6510. Death of defendant

The action is not abated by the death of a party defendant. His heirs or devisees or, if the estate is for a term of years, his executor or administrator may be cited to appear, and upon service on them, they shall become parties to the proceedings. The court may order such judgment, and with such costs, as the law and facts require.

R.S.1954, c. 176, § 12; 1959, c. 317, § 368.

§ 6511. Commissioners; appointment

After judgment that partition be made, the court shall appoint 3 or 5 disinterested persons as commissioners to make partition and set off to each his share, which shall be expressed in the warrant. Their shares may be set off together or in one tract, or the share of each may be assigned to him, at his election.

R.S.1954, c. 176, § 13.

§ 6512. —Oath

Before proceeding to discharge their duty, the commissioners shall be sworn to the faithful and impartial performance of it. The justice of the peace before whom they are sworn shall make his certificate thereof on the back of their warrant.

R.S.1954, c. 176, § 14.

§ 6513. Notice; majority report

The commissioners shall give reasonable notice of the time and place for making partition to all concerned who are known and within the State. They must all be present at the performance of their duties but the report of a majority is valid.

R.S.1954, c. 176, § 15.

§ 6514. Exclusive possession of part; improvements

When one of the tenants in common, by mutual consent, has had the exclusive possession of a part of the estate and made improvements thereon, his share shall be assigned from or including such part. The value of the improvements made by a tenant in common shall be considered and the assignment of shares be made in conformity therewith. When any person shall have heretofore made or shall hereafter make improvements upon a part of any real estate with the consent of the owners thereof, or any of them, and such person shall have thereafter become a tenant in common of such real estate, his share shall be assigned from or including such part, and the value of the improvements so made shall be considered and the assignment of shares made in conformity therewith.

R.S.1954, c. 176, § 16.

§ 6515. Parcel of greater value than share

When any parcel of the estate to be divided is of greater value than either party's share and cannot be divided without great inconvenience, it may be assigned to one party by his paying the sum of money awarded to the parties who have less than their shares, but the report shall not be accepted until the sums so awarded are paid or secured to the satisfaction of the parties entitled thereto.

R.S.1954, c. 176, § 17.

§ 6516. Expenses apportioned

An account of all the charges and expenses attending the partition shall, on request of any plaintiff, be presented to the court, and the presiding justice shall determine, after notice to all concerned, the equitable proportion thereof to be paid by the several owners in the lands of which partition has been made, and execution therefor may be issued against any owner neglecting to pay.

R.S.1954, c. 176, § 18; 1959, c. 317, § 369.

§ 6517. New partition; excessive share or value

If a share larger than his real interest or more than equal in value to his proportion is set off to a part owner, an aggrieved part owner, who at the time of partition was out of the State and was not notified in season to prevent it, his heirs or assigns, may within 3 years thereafter apply to the court that made the partition and it shall cause a new partition to be made.

R.S.1954, c. 176, § 19.

§ 6518. —Persons out of State

When a person to whom a share was left was out of the State when the partition was made and was not notified in season to prevent it, he may, within 3 years after final judgment, apply to the same court for a new partition. If it appears that the share left for him was less than he was entitled to, or that it was not equal in value to his proportion of the premises, the court may order a new partition as provided in section 6520.

R.S.1954, c. 176, § 22; 1959, c. 317, § 370.

§ 6519. —Persons evicted of share

When a person to whom a share has been assigned or left is evicted by an elder and better title than that of the parties to the judgment, he is entitled to a new partition of the residue, as if no partition had been made.

R.S.1954, c. 176, § 26.

§ 6520. —Excess removed

In such new partition, so much shall be taken from any share as the same shall be adjudged to be in excess of its just proportion of the whole, estimated as in the condition when first divided, and no more. If improvements have been made on the part taken off, reasonable satisfaction therefor, to be estimated by the commissioners, shall be made to him who made the improvements, by him to whose share they are added. The court may issue execution therefor and for costs of the new partition.

R.S.1954, c. 176, § 20.

§ 6521. Report and judgment

Commissioners in all cases shall make and sign a written return of their proceedings, and make return thereof with their warrant to the court from which it issued. Their report may be confirmed, recommitted or set aside, and new proceedings be had as before. When confirmed, judgment shall be entered accordingly and recorded by the clerk and by the register of deeds of the district where the estate is.

Such judgment is conclusive on all rights of property and possession of all parties and privies to the judgment, including all persons who might have appeared and answered, except as provided.

R.S.1954, c. 176, § 21.

§ 6522. Claimant not a party; judgment ineffective

When a person not a party to the proceedings claims to hold the premises described or any part thereof, in severalty, he is not precluded by the judgment for partition, but may bring his action therefor as if no such judgment had been rendered.

R.S.1954, c. 176, § 23.

§ 6523. Rights of nonparties to action

When a person, not a party to the proceedings, claims a share assigned to or left for a part owner, he is concluded so far as it respects the assignment of the share, but he is not prevented from maintaining an action within the time in which it might have been brought if no judgment for partition had been rendered, for the share claimed, against the tenant in possession, the same as if the plaintiff had claimed the piece demanded, instead of an undivided part of the whole.

R.S.1954, c. 176, § 24; 1961, c. 317, § 585.

§ 6524. Part owners receiving no share

When a person, not a party to the proceedings, to whom no share was assigned or left, claims to have been a part owner of the estate, he is concluded so far as it respects the partition, but not from maintaining an action against each person holding a share, for his proportion of each share as owned before partition was made.

R.S.1954, c. 176, § 25.

§ 6525. Rights of mortgagees or lienors

A person having a mortgage, attachment or other lien on the share in common of a part owner shall be concluded by the judgment, so far as it respects the partition, but his mortgage or lien remains in force on the part assigned or left to such part owner.

R.S.1954, c. 176, § 27.